HAWLEY et al. *v.* WATKINS.

Jan. 14, 1909.

[63 S. E. 560.]

1. Insane Persons (§ 38*)—Removal of Trustee.—A trustee of the estate of an incompetent person was properly removed, where it was shown on a bill for that purpose that he failed to make suitable provisions for the comfortable maintenance of his ward.

[Ed. Note.—For other cases, see Insane Persons, Cent. Dig. § 57; Dec. Dig. § 38.* 7 Va.-W. Va. Enc. Dig. 694; 13 Id. 330.]

2. Wills (§ 601*)—Construction—Estate Created.—A devise of property in fee simple is not converted into an estate for life by a subsequent clause in the will providing for the appointment of a trustee to receive the estate for the benefit of the devisee, who is an incompetent person, and for a disposition of any part of the estate remaining after the death of the devisee.

[Ed. Note.—For other cases, see Wills, Cent. Dig. § 1345; Dec. Dig. § 601.* 13 Va.-W. Va. Enc. Dig. 826, et seq.]

3. Wills (§ 601*)—Estate Created—Repugnancy of Provisions.—Where a will creates in the devisee an estate in fee simple, a subsequent clause, providing for a limitation over as to any portion of the estate remaining on the death of the devisee, is void for repugnancy.

[Ed. Note.—For other cases, see Wills, Cent. Dig. §§ 1340, 1341; Dec. Dig. § 601.* 13 Va.-W. Va. Enc. Dig. 784, 826.]

BOARD OF TRADE BLDG. CORPORATION *v.* CRALLE.

March 11, 1909.

[63 S. E. 995.]

1. Master and Servant (§ 301*)—Injuries to Third Persons—Person Employed by Servant.—A master is liable for the negligence of a person employed by his servant in the prosecution of the master's business, or of a person who assists the servant at his request if the servant has express or implied authority to procure assistance, and a negligent act is within the scope of the employment.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 1211; Dec. Dig. § 301.* 9 Va.-W. Va. Enc. Dig. 728.]

2. Carriers (§ 284*)—Injuries to Passengers—Acts of Third Persons.—Where defendant's hall boy, who was not charged with any duty of operating an elevator in defendant's office building, or of seeing that it was operated, requested another boy not in defendant's employ to operate the elevator to take plaintiff to one of the upper floors of the building, and while doing so plaintiff was injured by the boy's negli-

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*For other cases see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.

gent operation of the elevator, the relation of master and servant did not exist between defendant and the boy running the elevator; hence defendant was not liable for his negligence.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. § 1128; Dec. Dig. § 284.* 9 Va.-W. Va. Enc. Dig. 727.]

3. Carriers (§ 305*)—Injury to Passenger in Elevator—Proximate Cause.—Since injury to a passenger in an office building elevator by the sudden lowering of the elevator, as he was about to leave the cage after he had been taken to one of the upper floors of the building by a boy not in defendant's employ, operating the elevator without authority, could not reasonably be foreseen as a probable result of defendant's negligence in leaving the elevator door open as the cage was standing at the first floor, while the elevator boy was temporarily absent, such negligence was not the proximate cause of the passenger's injury, so occasioned.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. §§ 1139, 1245; Dec. Dig. § 305.* 10 Va.-W. Va. Enc. Dig. 372.]

CHESAPEAKE & O. RY. CO. *v.* HALL'S ADM'R.

March 11, 1909.

[63 S. E. 1007.]

1. Trial (§ 156*)—Demurrer to Evidence—Conclusiveness of Evidence.—On demurrer to plaintiff's evidence, matters covered by it must be taken as established.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 355, 356; Dec. Dig. § 156.* 4 Va.-W. Va. Enc. Dig. 522-3.]

2. Railroads (§ 324*)—Crossing Accidents—Contributory Negligence—Signals—Failure to Give.—A railroad company is not liable for a death at a road crossing for failing to give statutory signals, if another or other warnings were given which in fact notified decedent of the train's approach, or which would have been her notice, if she had used ordinary care, so that she could have avoided the accident.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. § 1021; Dec. Dig. § 324.* 4 Va.-W. Va. Enc. Dig. 134.]

3. Railroads (§ 327*)—Crossing Accidents—Contributory Negligence—Duty to Look.—Decedent was guilty of contributory negligence precluding recovery for her death, caused by being struck by an east-bound train while attempting to drive across the track, where she knew a train was approaching, though, on hearing that a train was approaching, she believed it was west-bound; where she could see the track east of the crossing for more than one-fourth mile; the train was rumbling, and apprised others in the neighborhood of its approach; she did not look down the track west of the crossing,

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*For other cases see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.